

Barry N. Gutterman, Esq. (BG6410)
Robert Briere Esq. (RB6080)
Barry N. Gutterman & Associates, P.C.
Attorneys for Defendant
Transportation Resources, Inc.
60 East 42nd Street, 46th Floor
New York, New York 10165
(212) 983-1466

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CNA INSURANCE COMPANY,
a/s/o CORNING, Inc.

Plaintiff

v.

TRANSPORTATION RESOURCES, INC. and U.A.
TRUCKING, INC.

Defendants.

ECF Case

**07 CV 6346
(Judge Koeltl)**

**DEFENDANT TRANSPORTATION RESOURCES, INC.'s
ANSWER AND AFFIRMATIVE DEFENSES
TO U.A. TRUCKING, INC.'s CROSS-CLAIMS**

Defendant, Transportation Resources, Inc. ("TRI"), by its attorneys, Barry N. Gutterman & Associates, P.C., for its Answer and Affirmative Defenses to Defendant U.A. Trucking, Inc.'s ("U.A.") Cross-Claims, states as follows:

- 1-23 TRI does not respond to paragraphs 1-23 of U.A.'s Answer as such allegations are not addressed to it.
24. TRI admits the allegations contained in paragraph 24 of the Cross-Claims.
25. TRI denies knowledge or information sufficient to admit or deny the allegations contained in paragraph 25 of the Cross-Claims, and therefore denies same and leaves U.A. to its proof.

- 26. TRI denies the allegations contained in paragraph 26 of the Cross-Claims.
- 27. TRI denies the allegations contained in paragraph 27 of the Cross-Claims.
- 28. TRI denies the allegations contained in paragraph 28 of the Cross-Claims.
- 29. TRI denies the allegations contained in paragraph 29 of the Cross-Claims.
- 30. TRI denies the allegations contained in paragraph 30 of the Cross-Claims.

**AS AND FOR A
FIRST AFFIRMATIVE DEFENSE**

- 31. TRI is not responsible for any damage to the shipment caused by the improper loading of plaintiff and/or U.A.

**AS AND FOR A
SECOND AFFIRMATIVE DEFENSE**

- 32. TRI has no liability to plaintiff or to U.A. as TRI acted only as property broker with regard to the shipment.

**AS AND FOR A
THIRD AFFIRMATIVE DEFENSE**

- 33. If the shipment referred to in the Complaint suffered any loss, damage, or delay, which is herein expressly denied, such loss, damage or delay was caused by U.A.

**AS AND FOR A
FOURTH AFFIRMATIVE DEFENSE**

- 34. To the extent that plaintiff and/or U.A. failed to meet the minimum filing requirements of filing a proper written claim within the time prescribed, this lawsuit is time barred.

**AS AND FOR A
FIFTH AFFIRMATIVE DEFENSE**

35. To the extent that U.A. failed to file Cross-Claims within the period prescribed, this lawsuit is time barred.

**AS AND FOR A
SIXTH AFFIRMATIVE DEFENSE**

36. In the event that said shipment moved subject to any statutory or contractual limitations of liability, either specifically agreed to or contained in any applicable tariffs and/or governing publications, the plaintiff and/or U.A. may not recover in excess of such limitations.

**AS AND FOR A
SEVENTH AFFIRMATIVE DEFENSE**

37. The Cross-Claims fail to state a claim against TRI upon which relief can be granted.

**AS AND FOR AN
EIGHTH AFFIRMATIVE DEFENSE**

38. The bill of lading, tariffs, and classifications and the governing publications do not contemplate responsibility for special damage. To the extent that plaintiff and/or U.A. seek recovery for special damages, TRI is not responsible.

**AS AND FOR A
NINTH AFFIRMATIVE DEFENSE**

39. In the event that U.A. failed to provide proper refrigeration for the shipment, U.A. is to be held responsible.

WHEREFORE, defendant Transportation Resources, Inc. demands judgment, (1) dismissing U.A. Trucking, Inc.'s Cross-Claims with prejudice, together with the costs, disbursements and reasonable attorneys fees; and (2) for such other or different relief as this Court may deem just and proper.

Dated: New York, New York
December 27, 2007

By: /s/ Barry N. Gutterman
Barry N. Gutterman, Esq. (BG6410)
Robert Briere, Esq. (RB6080)
Barry N. Gutterman & Associates, P.C.
60 East 42nd Street, 46th Floor
New York, New York 10165
Phone: (212) 983-1466
Fax: (212) 983-1229

Attorneys for Defendant
Transportation Resources, Inc.

To: Edward C. Radzik, Esq. (ER-2473)
McDermott & Radzik, LLP
Wall Street Plaza
88 Pine Street – 21st Floor
New York, New York 10005-1801
Phone: (212) 376-6400

Attorneys for Plaintiff

John J. Palmeri Esq.
Palmeri & Gaven, Esqs.
80 Maiden Lane
New York, New York 10038
Phone: (212) 608-1717

Attorneys for Defendant
U.A. Trucking, Inc.